IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1016 of 2006
In
MISC.CIVIL APPLICATION No. 66 of 2004
In
SPECIAL CIVIL APPLICATION No. 5079 of 1994
With
LETTERS PATENT APPEAL No. 1285 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE K.M.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT THROUGH THE CHIEF SECRETARY TO GOVT. - Appellant(s)
Versus
P.J.PATEL ASST.SECRETARY TO HON'BLE THE CHIEF JUSTICE & 3 - Respondent(s)

==========

Appearance :
MR KAMAL B TRIVEDI, ADVOCATE GENERAL with MR SUNIT SHAH, GOVERNMENT PLEADER with MS SANGEDTA VISHEN, AGP for Appellant(s) : 1
MR PM THAKKAR, SR. ADVOCATE WITH MR GAUTAM JOSHI i/b MR ANAND L SHARMA for Respondent(s) : 1, 4

MR JB PARDIWALA for Respondent(s) : 2,
Director of Pension for Respondent(s) : 3

==========

CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 10/10/2006
COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

The issues arising in both these appeals involve common questions of law and fact regarding revision of pay-scales of the posts of Secretary, two Additional Secretaries and two Assistant Secretaries to the Hon'ble Chief Justice of this Court. At the joint request of the learned counsel for the parties, we have taken up these appeals for final disposal and having heard the learned counsel for the parties we proceed to dispose of both the appeals by this common judgment.

2. Since the subject matter of the appeals is revision of pay-scales for different posts and for different periods, it will be necessary to refer to the chart indicating the posts, their pre-revised pay-scales and revised pay-scales and the other relevant details to get a broad overview of the controversy involved in these appeals. The said chart is accordingly to be treated as part of this judgment and marked as Chart-I.

Also for the sake of convenience, here is

the index to the judgment.

Facts	Paras 2 to 9B
Anomalies & Chief Justice's recommendations	Para 4 and 9
Interim orders in petitions (1994, 2001)	Paras 6 & 10
Pleadings of State Government	Paras 12 to 14
Findings/directions of learned Single Judge in judgment dated 6.3.2003	Paras 15 and 16
Subsequent judicial orders of learned Single Judge after Judgment dated 6.3.2003	Paras 17 and 18
Rival submissions	Paras 21 to 23
Discussion (including assessment of additional financial burden)	Paras 24 to 34
Developments after the judgment dated 6.3.2003	Paras 34 to 47
Further discussion	Paras 48 to 55
How the proceedings have been conducted by State Govt. Officers	Paras 56 to 61
DIRECTIONS	Paras 62, 67

3. The post of Secretary to the Hon'ble Chief Justice came into existence along with the establishment of this High Court on 1.5.1960. When the Government revised the pay-scales pursuant to the Third and Fourth Pay Commission recommendations, the post carried one pay-scale for regular incumbents, but a higher pay-scale for the existing incumbent. While the pay-scale for regular incumbent of the post of Secretary to the Hon'ble Chief Justice was prescribed as Rs.2500-4200 with effect from 1.1.1986, the then incumbent was given the scale of Rs.4500-5700. Similarly one post of Additional Secretary to the Hon'ble Chief Justice was created by the Government Resolution dated 29.6.1988 in the following pay-scale:-

> "Rs.2500-75-2800-100-4200
>
> Rs.4500-150-5700 (for the first incumbent to be appointed immediately on creation of this post)"

Thereafter, by Government Resolution dated 13.10.1988 the State Government created two posts of Assistant Secretaries in the Secretariat of the Hon'ble Chief Justice in the pay-scale of Rs. 2500-4200.

Before any anomaly or controversy arose, in the year 1990 the relevant posts and their pay-scales were as under :-

Secretary to the Chief Justice (personal scale to the then incumbent)	2500-4200 (4500-5700)
Additional Secretary to the Chief Justice (Personal scale to the then incumbent)	2500-4200 (4500-5700)
Assistant Secretary to the Chief Justice	2500-4200
Stenographer Grade I	2000-3500

4.0 **Anomalies arose in 1991 w.e.f. 1.1.1986**

4.1 However, the Pay Scale of Stenographer Grade I came to be upgraded as under:-

By Government Resolution dated 5.7.1991 the Government introduced the scheme of granting higher pay-scales, to holders of various posts including Stenographers Grade-I upon completion of 9/18/27 years of service. Under this scheme Stenographers Grade I in the pay-scale of Rs.2000-3500, upon completion of 9 years' service, were to get the higher pay-scale of Rs. 2500-4200 w.e.f. 1.1.1986. By another Government Resolution dated 19.11.1991 the State Government upgraded 10% of the existing posts of Private Secretaries to the Hon'ble Judges of the

High Court (Stenographer Grade I) (Class II) as Private Secretaries (Stenographer Grade I) (Class I) in the pay-scale of Rs.3000-4500 with effect from 1.1.1986. However, no corresponding revision was made to the pay-scale of Secretary/Additional Secretary to the Hon'ble Chief Justice or to the pay-scale of Assistant Secretary to the Hon'ble Chief Justice with the resultant anomalies becoming apparent in the chart that follows.

4.2 In view of the anomalies which surfaced from July/November 1991 onwards and which Resolutions were given effect from 1.1.1986, the pay-scales of Secretary and Assistant Secretary to the Hon'ble Chief Justice were lower than the pay-scale of Stenographer Grade I in the Selection Grade from which cadre the Assistant Secretaries were appointed. The Hon'ble Chief Justice of the High Court, therefore, by Registrar's letter dated 29.6.1992 recommended the pay-scale of Rs.4500-5700 for the posts of Secretary and Additional Secretary to the Chief Justice and Rs.3500-5000 for the post of Assistant Secretary to the Chief Justice. As stated earlier, the Government by GR dated 29.6.1988 had already granted the pay-scale of Rs.4500-5700 to the first incumbent of the post of Additional Secretary to the Chief Justice. The same pay-scale was also given to the then incumbent of the post of Secretary to the Chief Justice also but as personal pay-scale.

4.3 **Chart showing Anomalies and Chief Justice's Recommendation**

	Anomalies surfaced in 1991 (with effect from 1.1.1986)	As per Chief Justice's recommendation dated 29.6.1992
Secretary to the Chief Justice (scale for regular incumbent) (personal scale to the then incumbent)	Rs. **2500-4500** (4500-5700)	**Rs.4500-5700**
Additional Secretary to the Chief Justice (scale for regular incumbent) (personal scale to the then incumbent)	Rs. **2500-4500** (4500-5700)	**Rs.4500-5700**
Assistant Secretary to the Chief Justice	Rs. **2500-4200**	**Rs.3500-5000**
10% of the Private Secretaries to the High Court Judges (Stenographer Grade I) (Class I) - upgraded in November 1991 w.e.f. 1.1.1986	Rs. 3000-4500	
Stenographer Grade I with 9 years' service – upgraded in July 1991 w.e.f. 1.1.1986	Rs. 2500-4200	
Stenographer Grade I	Rs. 2000-3500	

5. In response to the aforesaid letter dated 29.6.1992 of the Hon'ble the Chief Justice, the State Government by letter dated 1.10.1993 stated as under:-

> "Secretary and Additional Secretary to the Hon'ble the Chief Justice have been granted the pay-scale of Rs. 4500-5700, instead of regular pay-scale of Rs. 2500-4200, as personal pay-scales. This pay-scale is

personal. The new incumbent will get the pay-scale of Rs. 2500-4200."

6. After the aforesaid communication, Mr PJ Patel and Mr Motwani holding the posts of Assistant Secretary to the Hon'ble Chief Justice filed Special Civil Application No. 5079 of 1994 praying for appropriate directions for removal of the above anomaly. After given the respondents an opportunity of being heard, by ad-interim order dated 7.7.1994 a learned Single Judge of this Court (Coram : Hon'ble Mr Justice SM Soni) directed the State Government to issue necessary orders permitting the petitioners to draw their salary in the Pay Scale of Rs. 3500-5000 with immediate effect till it finally decides to revise the pay-scale of the petitioners. On 30.11.1994 another learned Single Judge of this Court (Coram: Hon'ble Mr Justice JM Panchal) confirmed the previous order and directed the State Government to fully comply with the previous order dated 7.7.1994 and also directed the Government to grant all consequential benefits to the petitioners on revision of pay-scales.

The orders of the learned Single Judge were challenged by the State Government in Letters Patent Appeal No. 480 of 1995 which came to be dismissed by order dated 31.8.1995. The matter was carried by the State Government before the Hon'ble Supreme Court but the Special Leave Petition also came to be dismissed.

7. The Hon'ble the Chief Justice again

reiterated his recommendations through the Registrar's letter dated 22.8.1995. The Government response was to wait till the recommendations of the Central Fifth Pay Commission. Thereafter, as part of the exercise for revising the pay-scales of civil services, the State Government revised the pay-scales for various posts by making the Gujarat Civil Services (Revision of Pay) Rules, 1997.

	w.e.f. 1.1.1986	w.e.f. 1.1.1996
Various posts	4500-5700	14300-18300
Various posts	3500-5000	12000-16500
Steno. Grade-I Selection grade (10% post)	3000-4500	10000-15200
Steno. Grade-I with 9 years service	2500-4200	8500-14000
Steno. Grade-I	2000-3500	6500-10500

In view of the above revision of pay-scales, the Hon'ble the Chief Justice made recommendation dated 27.1.1998 for corresponding revision of pay-scales of the officers on the establishment of the High Court with effect from 1.1.1996. It was also clearly mentioned in the said letter that the question of some anomalies existing in the present pay-scales of the staff was already taken up with Government and that while recommending corresponding revisions, the Chief Justice had not taken those questions in consideration and that the said questions would be taken up with the Government

thereafter.

8. By Government Resolution dated 27.2.1998, the State Government accorded sanction to revision of pay-scales of the Officers and Staff on the establishment of the High Court with effect from 1.1.1996 as per the Schedule appended with the said Government Resolution read with corrigendum dated 24.4.1998.

Some of the relevant entries in the said Schedule to the Government Resolution dated 27.2.1998 were as under:-

Designation	**Present Scale i.e. prior to 31.12.1995** **Rs.**	**Revised scale i.e. 1.1.1996 onwards** **Rs.**
Secretary to the Hon'ble the Chief Justice	**2500-4200** (Rs. 200 special pay)*	**8500-14000**
Additional Secretary to the Hon'ble the Chief Justice	**2500-4200** (4500-5700 for the present incumbent only)	**8500-14000** (14300-18300 for present incumbent only)
Assistant Secretary to the Hon'ble the Chief Justice	**2500-4200**	**8500-14000**
Private Secretary to Hon'ble Judge and Stenographer Grade-I	**2000-3500** (Rs.80/- p.m. Special Pay to those attached to Judge)	**6500-10500**
10% of the existing cadre upgraded in the scale of Stenographer Grade-I (Class-I)	**3000-4500**	**10000-15200**

*Note : Post of Secretary to the Hon'ble Chief

Justice was lying vacant from 4.2.1995 to 16.8.1998.

9. Since there were obvious anomalies even upon revision of the pay-scales with effect from 1.1.1996 under the above Government Resolution dated 27.2.1998, by Registrar's letter dated 9.9.1998, the Hon'ble the Chief Justice recommended for removal of the anomalies forthwith by giving the pay-scales as under :-

	Post	As per GR dated 27.2.98	CJ Recommended on 9.9.1998
1.	The Secretary to Chief Justice	8500-14000	14300-18300
2.	The Additional Secretary to the Chief Justice	8500-14000 (14300-18300 to the present incumbent only)	14300-18300
3.	The Assistant Secretary to the Chief Justice	8500-14000	12000-16500

9A. Thereafter, by Government Resolution dated 10.12.1998 the State Government accorded sanction for creation of one temporary post of Additional Secretary to the Hon'ble Chief Justice in the pay-scale of Rs. 14300-400-18300. However, by subsequent Resolution dated 31.3.1999 the pay-scale was changed to Rs. 8500-275-14100 without indicating any reason whatsoever.

9B. In the meantime, the State Government by

communication dated 29.3.1999 provisionally placed the Assistant Secretaries in the pay-scale of Rs.3500-5000 pending disposal of the writ petition admitted in the year 1994. However, the Assistant Secretaries were not given the corresponding revised pay-scale of Rs.12000-16500 nor were the Secretary and Additional Secretary to the Hon'ble Chief Justice given the pay-scale of Rs.14300-18300 inspite of the recommendations made by the Hon'ble the Chief Justice. Hence, the officers in the Chief Justice's Secretariat made a representation dated 28.3.2000 to the Hon'ble Chief Justice.

Interim orders in petitions filed in 2001

10. We may now refer to filing of two more writ petitions besides the one filed in 1994, which was still pending.

10.1 From 1996 to April 2001, the Officers then holding the posts of Secretary to the Hon'ble the Chief Justice, Additional Secretaries to the Hon'ble Chief Justice (except Mr SB Pathan who died in September 1998 as Secretary to the Hon'ble Chief Justice) and Assistant Secretaries to the Hon'ble Chief Justice were being paid salary only in the pay-scale of Rs. 8500-14000 (corresponding to pre-revised scale of Rs.2500-4200) which was the pay-scale for Stenographer Grade I with 9 years' service and, therefore, four officers in the Chief Justice's

Secretariat filed Special Civil Application No.2649 of 2001 with a grievance that apart from the anomalies required to be removed by the State Government, the State Government ought to respect the interim orders passed by this Court in Special Civil Application No. 5079 of 1994 as far back as on 7.7.1994 and confirmed on 30.11.1994 by which the petitioners in that petition (two Assistant Secretaries to the Hon'ble the Chief Justice) were required to be given pay-scale of Rs. 3500-5000 corresponding to revised pay-scale of Rs. 12000-16500 and similarly the Secretary and the Additional Secretaries to the Hon'ble Chief Justice were required to be given the higher pay-scale of Rs. 14300-18300 corresponding to the pre-revised pay-scale of Rs. 4500-5700. After hearing the State Government, one of us sitting as a Single Judge passed interim order dated 1.5.2001 directing the respondents i.e. the State Government and the High Court on the administrative side to give the petitioners the following Pay Scales :-

Secretary/Additional Secretary to the Hon'ble the Chief Justice	Rs. 14300-18300 (pre-revised Pay Scale Rs. 4500-5700) with effect from 1.1.1996 or from the date of their appointment, whichever is later
Assistant Secretaries to the Hon'ble the Chief Justice	Rs. 12000-16500 (pre-revised Pay Scale Rs. 3500-5000) with effect from 1.1.1996 or from the date of their appointment, whichever is later

By the same interim order, the respondents

were also directed to fix the pay of the petitioners in the aforesaid pay-scales and thereafter to pay the arrears of difference of salary and allowances with effect from 1.1.1996. It was also directed that where the Officers holding any of the above posts had retired, the pension, gratuity and other retiral benefits shall be computed on the basis of the above directions and that in future also when an officer would retire, the retiral benefits shall be computed on the basis of the above directions.

10.2 The above interim order was carried in appeal and by order dated 17.8.2001 in Letters Patent Appeal No. 768 of 2001, the Division Bench confirmed the above interim order dated 1.5.2001 with the only modification that no arrears of difference of salary were to be paid for the period prior to 1.5.2001, though the notional pay fixation shall be made with effect from 1.1.1996 or the date of appointment, whichever is later. The said order in the LPA was challenged before the Hon'ble Supreme Court in SLP (Civil) No. 20342 of 2001 which came to be dismissed on 9.1.2002 in the following terms:-

> “We are of the view that the interim salary which has been directed to be paid to the respondents is subject to the decision of the writ petition. We are, therefore, not inclined to interfere in the matter. The Special Leave Petition is, accordingly, dismissed.”

10.3 In the third petition filed by two other officers in the Chief Justice's secretariat (Special Civil Application No. 10008 of 2001), another learned Single Judge of this Court passed similar interim orders on 2.11.2002 following the order dated 17.8.2001 of the Letters Patent Bench in Letters Patent Appeal No. 768 of 2001.

Pleadings of State Government

11. All the three petitions ultimately reached final hearing before the learned Single Judge. In view of the intervening events, amendments were also permitted to be made to the petition filed in the year 1994 for giving the petitioners corresponding revised pay-scales of Rs.12000-16500 for the posts of Assistant Secretary and Rs.14300-18300 for the posts of Secretary/Additional Secretary to the Hon'ble the Chief Justice.

12. Affidavit dated 4.4.1998 of Mr GH Makwana, Under Secretary, Legal Department filed in Special Civil Application No. 5079 of 1994 did not deal with the major grievance of the petitioners that there were serious anomalies in the matter of pay-scale of Secretary/Additional Secretary to the Chief Justice and in the pay-scale of Assistant Secretary to the Chief Justice. The defence, if at all it can be so considered, pleaded in the affidavit in reply was “there are no recruitment rules for the post of Assistant Secretary; that the post of Assistant

Secretary having been upgraded in the pay-scale of Rs.2500-4200 on the basis of strength and length of service and norms and there remains no reason to give upward revision in the pay-scale of Rs.3500-5000. ... . creation of ladder, financial powers, liabilities and responsibility require examination by experts and there cannot be revision from the respective date in a particular time scale. ... ... It is submitted that the matter was examined by the Government in the Finance Department pursuant to transmission of various facts by the administrative side of the Hon'ble High Court. ... ... It is submitted that the pay-scale of Rs.4500-5700 has been sanctioned to the post of Secretary and Additional Secretary to the Hon'ble Chief Justice as personal pay-scale as per the sanction accorded by the administration upto Hon'ble Chief Minister and regular pay-scale to the incoming incumbent has been decided and fixed in the pay-scale of Rs.2500-4200, as per the decision making process concluded at the relevant time".

It was also contended that revision of pay-scales is a policy matter and is required to be examined by the expert body.

Affidavit in reply was also filed by Mr NG Hareja, Under Secretary to the State Government in the Legal Department in Special Civil Application No.2649 of 2001 contending that :-

> “all the posts of Stenographer (Asstt. Secretary, Additional Secretary, Secretary) in the Chief Justice's secretariat are of equal rank and status, as the recruitment rules for the same provide for common provision of promotion and selection from amongst the feeding posts/cadre of Private Secretary (Steno Grade-I, Class-II) and when the proposal for creation of posts of Assistant Secretary was made, it was made in the pay scale of Secretary and, therefore, it was equated with posts of Secretary and therefore all these posts in the office of the Chief Justice's Secretariat can not be filled in by persons working in other Class-I non feeding cadre carrying the scale of pay Rs.10,000-14,100/- (?).”

The deponent of the reply affidavit did not specifically deal with the recommendations made by the Hon'ble the Chief Justice through the Registrar's letters dated 29.6.1992 and 9.9.1998 and kept harping back on the position which was prevailing prior to 1991. It was even contended in the affidavit that there was no anomaly in the pay-scale of Secretary and Assistant Secretary to the Chief Justice.

13. At the hearing of the three petitions before the learned Single Judge, the learned Advocate General appearing for this Court on the administrative side made a statement that the earlier recommendations contained in the communications dated 26.9.1992 and 9.9.1998 were made in exercise of the power of the Hon'ble Chief Justice under Article 229 of the Constitution.

14. In view of the obvious anomalies, the reply affidavits on behalf of the State Government would not have been a sufficient defence even in an ordinary service matter of employees of the State Government, much less in a matter involving the provisions of Article 229 of the Constitution which read as under:-

> "**229. Officers and servants and the expenses of High Courts.-** (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct :
>
> Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.
>
> (2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose:
>
> Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.
>
> (3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be

charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund."

[emphasis supplied)

Findings & directions of learned Single Judge

15. The learned Single Judge gave the following findings on merits :-

(i) there were anomalies arising from the upgradation of the posts of Stenographer Gr.I in July 1991 and November 1991 w.e.f. 1.1.1986, but in absence of revision of pay-scales of the Secretary/ Addl. Secretary, those officers were placed in the pay-scale lower than Stenographer Gr.I in the selection grade w.e.f 1.1.1986.

(ii) Once the pay-scale of Rs.4500-5700 was given to the incumbents of the posts of Secretary/Additional Secretary, such pay-scale could not be considered as "personal pay-scale". The post of Secretary to the Hon'ble the Chief Justice is the same, irrespective of the incumbent. Nature of duties and responsibilities is also same, irrespective of the incumbent and the work is also same, irrespective of the incumbent. Hence, the Government decision not to give higher pay-scale of Rs.4500-5700 to subsequent appointees on the posts of Secretary/ Addl. Secretary to the Hon'ble

Chief Justice was violative of Articles 14 and 16 of the Constitution on the face of it.

(iii) Once the pay-scale for the post of Secretary and Additional Secretaries to the Hon'ble Chief Justice is sanctioned at Rs.4500-5700, the State Government ought to have revised the pay-scale of Assistant Secretaries to the Hon'ble Chief Justice to Rs.3500-5000 by suitably amending the relevant rules for the purpose of placing the matter for approval before the Governor in view of the provisions of Article 229(2) of the Constitution of India.

(iv) As regards the power of the Hon'ble Chief Justice under Article 229 of the Constitution :-

> "14. Therefore, the only conclusion inevitable is that the powers as per Article 229 of the Constitution of India vest in the Hon'ble Chief Justice for regulating the terms and conditions of the staff of the High Court and it is only in the matter where it involves the financial aspects, like the payment of salaries, leave, pension, etc., the approval of the Governor would be required."

16. The learned Single Judge gave the following directions in para 21.1 of the judgment :-

> “21.1 The State Government shall consider the mater keeping in view the observations made by this Court in the above judgment and shall also take into consideration that the communication addressed by respondent No.2 namely; the Registrar of the High Court dated 29-6-1992 and dated 9-9-1998 are in exercise of power by the then Hon'ble Chief Justice under Article 229 of the Constitution of India.”

However, it appears that it was on account of the submission of the learned AGP appearing for the State Government that the Hon'ble Chief Justice's recommendations were not in the form of proposed rules or proposed amendment to the existing rules that after expressing the view that the objections was not maintainable, the learned Single Judge gave further directions in the following terms :-

> “21.2 If the State Government finds that it is possible to amend the relevant rules on the basis of the aforesaid two recommendations and decisions and to place it for the approval of the Governor of the State, the State Government shall take action accordingly and if any formal proposal is required from the Hon'ble Chief Justice, it would be open to the State Government to approach the Registrar of the High Court for such purpose.
>
> 21.3 In view of the aforesaid statement made by the learned Advocate General on behalf of the Registrar of the High Court, when the decision is already taken under Article 229(2) of Constitution of India by the Hon'ble Chief Justice, and if the same is desired by the State Government, the

> Registrar of the High Court may also forward a formal proposal for amendment of the relevant rules in light of aforesaid both the communications dated 29.6.1992 and dated 9.9.1998 referred to hereinabove."

The learned Single Judge granted six months' time for completion of the entire exercise and also directed that until the final decision is taken in the matter by His Excellency the Governor of the State, the interim relief granted earlier in all the three petitions shall continue.

Subsequent Judicial orders of learned Single Judge after the Judgment dated 6.3.2003

17. After the aforesaid decision was rendered by the learned Single Judge on 6.3.2003, the State Government did not carry the matter in appeal for more than three years. On the contrary, initially when the Finance Department proposed challenging the said decision, the Law Secretary made a note dated 2.8.2003 concluding as under :-

> "... ... In that view of the matter, there is no question of challenging the order dated 6.3.2003 passed by the learned Single Judge in Special Civil Application s No. 5079 of 1994, No. 2649 of 2001 and No. 10008 of 2001 as suggested by the Finance Department and the file be processed for necessary approval of the Governor to the recommendations made by the High Court vide letter dated 29.6.1992 and dated 9.9.1998 as directed by the High Court in the said petition."

18. However, the State Government did not issue any order sanctioning the pay-scales as recommended by the Hon'ble the Chief Justice in the communications dated 29.6.1992 and 9.9.1998. Hence, the petitioners filed Misc. Civil Application No. 66 of 2004 for implementation of the directions of the learned Single Judge. It appears that various orders were passed by the learned Single Judge in the said proceedings from time to time.

18.1 Order dated 29.4.2004

> "Mr AD Oza, Ld. GP places on record the affidavit of the Under-Secretary, Legal Dept stating that the file is cleared at the level of Hon'ble the Chief Minister and is now forwarded to His Excellency, the Governor of Gujarat for necessary decision. Said affidavit is taken on record. S.O. to 25.06.04 for reporting further progress in the matter."
>
> (emphasis supplied)

18.2 On 22.12.2005, when the learned Standing Counsel for the High Court stated that the Hon'ble Chief Justice had sent the proposal dated 16.12.2005 for amendment in the Rules, including the draft rules, the learned Single Judge passed the following order:-

> "2. As such sufficient time has passed and, therefore, it is directed that the necessary action shall be taken by the State Government on the basis of the proposal read

with the judgment of this Court in the main Special Civil Application and the decision shall be placed on record on 25.1.2006."

18.3 However, on 21.1.2006, Mr MK Dave, Deputy Secretary, Legal Department filed affidavit containing submissions running counter to the findings given in the judgment dated 6.3.2003. Hence, the learned Single Judge was constrained to pass the following order on **30.1.2006** :-

"1. As such after the order dated 22.12.2005 passed by this Court, it was not required for the State to file the affidavit-in-reply, stating averments made at paragraph 17, since such prima facie appears to be in contravention to the judgement of this Court, which has not been challenged by the State Government and rather accepted, taking the view that in the matter of pay-scale of staff working under the High Court, Hon'ble the Chief Justice on administrative side is an expert body in the field as an executive and as per Article 229 of the Constitution of India, his view is final, subject to the approval of His Excellency the Governor, in case it is to result into additional financial burden. I would have considered the matter further, however, Mr. Trivedi, learned Additional Advocate General, submitted that it was by mistake paragraphs 17, 18, and 19 are reproduced in the latter part of the affidavit, though they pertain to the past namely; prior to the order dated 22.12.2005 and, therefore, it has been prayed that this Court may allow the mistake to be corrected by taking lenient view.

2. In view of the above, keeping in view the larger issue, I find that such mistake

> may be allowed to be corrected. It deserves to be recorded that while considering the compliance to the order dated 22.12.2005 of sanctioning the proposal made by the Hon'ble the Chief Justice on administrative side for amendment of the Rules, the stand taken in paragraphs 16 to 19 shall not at all be considered by the State Government and hence ordered accordingly.
>
> 3. It deserves to be recorded that in a matter of sanctioning proposal for amendment of the Rules as suggested by the Hon'ble the Chief Justice under Article 229 of the Constitution of India on administrative side, where it is to result into additional financial burden of salary, the scope of scrutiny by the Government is not that of sanctioning pay-scale to its own staff/government employee or is that of granting approval, unless extraordinary circumstances exist, such approval is to be granted."

18.4 Ultimately, on 5.7.2006, the learned Single Judge made a detailed order including reproduction of several paragraphs from the judgment dated 6.3.2003 and the learned Single Judge made the following observations/directions :-

> 4. [The legal position] leaves no room in the present case for the State Government to sit in appeal over the decision of the Hon'ble the Chief Justice on administrative side as to whether the rules for the terms and conditions of the staff of the High Court should be amended or not amended, nor does it leave any room to the State Government, while exercising its executing function, which is not at all for the staff of the High Court, but is for the other

staff of the Government, to differ on the ground that a particular staff of the High Court should be having a particular qualification or a particular mode of recruitment or a particular pay-scale. The constitution has vested the power for all such purposes with the Hon'ble the Chief Justice under Article 229 and it is only in a matter where it affects salary, leave, pension, etc., the approval of the Hon'ble Governor is required, because ultimately the payment is to be disbursed for such purpose by the Government.

....

7. .... this Court while undertaking the judicial scrutiny had found that the error had crept in, which was required to be resolved and the expert body i.e. the Hon'ble the Chief Justice on administrative side had accordingly resolved. Therefore, on merits such anomaly and resolution of such anomaly was also examined by the Court on judicial side and once such action having not disturbed by the Court on judicial side, it would not be for the State Government to undertake the scrutiny of the proposal on merits once again as it was undertaken by the Committee of the Secretaries on 4.3.2006.

....

9. Suffice it to say that the proposal forwarded by the Hon'ble the Chief Justice on administrative side in pursuance of the judgment of this Court shall be treated as a lawful and valid proposal by the State Government for forwarding the same to the Hon'ble Governor for approval. Hence, ordered accordingly."

The hearing of the Misc. Civil Application

was adjourned to 2.8.2006 for reporting the progress and compliance with the order.

18.5 On 2.8.2006, the learned Single Judge recorded the non-compliance with the previous order and concluded with the following directions :-

> "As the decision of the High Court is accepted, the only course open to the Government is to comply with the judgment and thereby to comply with the order dated 5.7.2006 passed by this Court. Therefore, with a view to give one more opportunity once again, the Chief Secretary of the State Government is directed to comply with the order dated 5.7.2006 passed by this Court on or before 18.8.2006, failing which the Chief Secretary shall remain personally present before this Court .. ...."
>
> (emphasis supplied)

19. It was thereafter that the State Government filed Letters Patent Appeal No. **1016 of 2006** on 11.8.2006 **for challenging the aforesaid order dated 2.8.2006** requiring the Chief Secretary to comply with the order dated 5.7.2006, failing which the Chief Secretary was to remain present before the Court. The appeal came to be admitted on 14.8.2006 and on the stay application the Division Bench granted ex-pate ad-interim stay against execution of the said order dated 2.8.2006 of the learned Single Judge.

Subsequently on 15.9.2006 the State Government filed Letters Patent Appeal (Stamp) No.

2070 of 2006 for challenging the judgment dated 6.3.2003 of the learned Single Judge with an application for condoning delay of 1265 days. At the hearing of the said application, the learned Advocate General showed us the relevant file for perusal of the notings, to enable us to consider whether the Government had acquiesced in the judgment or not. We will refer to the relevant notings at the appropriate stage. By a separate order, we have allowed Civil Application No. 10978 of 2006 and condoned the delay of 1265 days in filing the Letters Patent Appeal against the final judgment dated 6.3.2003 of the learned Single Judge and the appeal is now numbered as Letters Patent Appeal No. 1285 of 2006.

20. Before proceeding to narrate the rival submissions, it is necessary to refer to creation of one post of Additional Registrar-cum- Principal Private Secretary to the Hon'ble Chief Justice w.e.f. 1.11.2004. The budget sanction for this post was in the scale of Rs.16750-20500, but by Government Resolution dated 25.10.2004, the post of Additional Registrar was created in the scale of Rs.14300-18300. In view of the proposal for upgradation of various other posts on the establishment of the High Court for higher pay-scales (Registrar to Registrar General in the scale of Rs.22850-24850 and Joint Registrars to Registrars in the scale of Rs.18750-22850) which came to be accepted w.e.f. 1.11.2004, the Hon'ble Chief Justice had also recommended the pay-scale of Rs.16750-20500 for the post of Additional Registrar

by letters dated 21.09.2002 and 16.12.2005.

Since the judgment dated 6.3.2003 and subsequent order dated 2.8.2006 giving rise to these appeals had no occasion to, or did not, deal with the pay-scale for the said post, we do not find it necessary to make any observations regarding the pay-scale for the said post except that it was one of the posts covered by the Hon'ble Chief Justice's recommendations dated 16.12.2005.

Rival Submissions and Discussion of additional financial burden upon approval of recommended pay-scales

21. At the hearing of these appeals, Mr Kamal B Trivedi, learned Advocate General and the learned Government Pleader have submitted as under :-

21.1 The learned Single Judge erred in making observations in paras 10, 12 and 14 of the judgment regarding the amplitude of the power of the Hon'ble the Chief Justice under the provisions of Article 229(2) of the Constitution. It is submitted that the learned Single Judge has taken away the discretion of His Excellency the Governor acting under the aid and advice of the Council of Ministers not to approve the pay-scales recommended by the Chief Justice of the High Court.

21.2 The learned Single Judge has erred in

finding fault with the decision of the State Government to give personal pay-scale of Rs.4500-5700 only to the concerned incumbents of the post of Secretary/Additional Secretary to the Chief Justice and in observing that it was not open to the Government to grant such pay-scale as “personal pay-scale” and that such pay-scale could not be denied to the subsequent appointees on the posts of Secretary/Additional Secretary to the Chief Justice.

21.3 Acceptance of the recommendations by the Hon'ble Chief Justice and that too with retrospective effect would put a heavy financial burden on the State Exchequer. At the first hearing, the learned Government Pleader submitted a note containing the gist of recommendations made by the Hon'ble the Chief Justice on 29.6.1992, 27.1.1998 and 9.9.1998 and the note ended with the following words :-

> “Total financial burden in view of the aforesaid recommendations (of the Hon'ble the Chief Justice) is in the order of Rs.2,63,08,800/- (Rs.2.63 crores) whereas the recurring burden is Rs.14,61,600/- (Rs.14.61 lakhs) per annum with reference to the Secretariat of the Hon'ble CJ.”

21.4 Veiled submissions have also been made regarding the number of officers required in the Chief Justice's Secretariat.

22. In view of the above figures, we called upon the learned Government Pleader to submit the detailed

calculations to justify the non-acceptance of recommendations on the ground of additional financial burden. Thereupon, the learned Government Pleader produced a statement signed by an Under Secretary to the Government in the Finance Department. It has been submitted that by the learned Advocate General and the learned Government Pleader on the basis of the said statement that implementation of the decision of the learned Single Judge would place on the State Government additional financial burden of Rs.1,76,25,600/- (Rs.1.76 crores) over a period of 20 years from 1.1.1986 to 31.12.2005 and that it would thus cast additional burden of Rs.8,81,280/- (Rs.8.81 lakhs) for one year.

23. On the other hand, the learned counsel for the petitioners have submitted that the State Government having accepted the decision dated 6.3.2003 of the learned Single Judge has now filed the Letters Patent Appeals after more than three years only to wriggle out of the consequences for non compliance with the directions of the learned Single Judge which had resulted into the last direction dated 2.8.2006 requiring the Chief Secretary to remain present before the learned Single Judge. However, in order to see that the petitioners can satisfy us on the merits of the controversy and point out the unreasonableness on the part of the State Government in not accepting the recommendations of the Hon'ble the Chief Justice being made from 1992 onwards, the learned counsel for the original

petitioners have placed on record two charts (Charts II and III) giving particulars of the pay-scales in which the petitioners were rendering services prior to their appointment as Assistant Secretary or Additional Secretary or as Secretary to the Hon'ble the Chief Justice i.e. the basic pay (Chart II to this judgment) and gross pay (Chart III) prior to the interim orders and after the interim orders. It is submitted that on a perusal of the said charts, it would be clear that before their appointment as Assistant Secretary or Additional Secretary to the Hon'ble Chief Justice, all the petitioners were in the pay-scale of Rs.10000-15200 and most of them were drawing their salary at a stage above Rs.12000 which was the minimum stage in the pay-scale of Rs.12000-16500 recommended by the Hon'ble the Chief Justice for the post of Assistant Secretary.

It is submitted by the learned counsel for the petitioners that even if the judgment is implemented and the petitioners are placed in the pay-scales as per the recommendations of the Hon'ble the Chief Justice, the additional financial burden on the State exchequer for all the officers presently working in the Chief Justice's Secretariat would be less than rupees one lakh per year.

Discussion

24. On a perusal of the statement signed by the Under Secretary in the Finance Department as well as the charts submitted by the learned counsel for the

petitioners, we find that there is a clear attempt on the part of the officers of the State Government to mislead this Court by showing inflated and exaggerated figures of additional financial burden on the State exchequer. The charts produced by the petitioners indicate that out of the five retired officers and the six officers presently working in the Chief Justice's Secretariat, i.e out of total eleven officers, immediately prior to their appointment on the posts of Assistant Secretary as many as nine officers had completed 15 years' service as Stenographer Grade-I and were in the selection grade were already prescribed scale of Rs.300-4500 or the revised scale of Rs.10000-15200 and were drawing salary at a stage above the minimum of the scale recommended by the Hon'ble the Chief Justice for Assistant Secretaries (pre-revised Rs.3500-5000 and revised Rs.12000-16500). The remaining two officers were also drawing their salary at the stage of Rs.10,975 / Rs.11,300 in the pay-scale of Rs.10000-15200. We, therefore, find considerable substance in the case of the original petitioners that the additional financial burden on acceptance of the recommendations of the Hon'ble Chief Justice is likely to be less than rupees one lakh per year for the entire Secretariat of the Hon'ble the Chief Justice.

25. The calculations prepared by the Under Secretary in the Finance Department have proceeded on the premise that the petitioners had completed only 9

years service and were drawing salary at the middle of the stage of Stenographers Grade-I (pre-revised Rs.2500-4200, revised Rs.8500-14000) and that immediately upon appointment to the post of Assistant Secretary, they would start drawing salary in the middle of the pre-revised scale of Rs.4500-5700 (revised scale Rs.14300-18300). This Court would, therefore, like to place on record its grave concern and displeasure about the extent to which the officers of the State Government have gone in trying to prejudice this Court on the question of the additional financial burden likely to be cast on the State exchequer if the recommendations of the Hon'ble the Chief Justice made in letters dated 29.6.1992 and 9.9.1998 were to be approved by His Excellency the Governor of Gujarat.

26. In fact, the following extract from the letter dated 13/14.10.2005 of the State Government in the Legal Department clearly indicates that the Government has impliedly accepted the anomalies in the pay-scale of Assistant Secretaries and Additional Secretary/Secretary to the Hon'ble Chief Justice but have refused to give retrospective effect in giving higher pay-scale for the past period. (please see para 43 of this judgment).

> “However, considering the long history of litigation, orders/interim orders passed by the Hon'ble High Court in some individual cases and in view of the proposal made by the Hon'ble the Chief Justice it is decided

> that the person working in the Secretariat of Hon'ble Chief Justice either as Secretary or Additional secretary or Assistant Secretary, with prospective effect **will get one step higher pay-scale** than the cadre pay-scale of Stenographer so long as he continues to be in the said office subject to the following conditions.....”
>
> (emphasis supplied)

27. Having regard to the fact that the then incumbents of the posts of Secretary/Additional Secretary to the Hon'ble the Chief Justice were already given higher pay-scales (Rs.4500-5700 revised to Rs.14300-18300) as personal pay-scales till 1995-1998 and that the same pay-scales were recommended by the Hon'ble the Chief Justice since 1992/1998 for the subsequent appointees also and that this Court had even on the judicial side passed interim orders as far back as in 1994/2001 to grant the same pay-scale of Rs.4500-5700 (revised to Rs.14300-18300) to the Secretary/Additional Secretary and the pay-scale of Rs.3500-5000 (revised to Rs.12000-16500) to the Assistant Secretaries as per the recommendations of the Hon'ble the Chief Justice in 1992/1998 and that those orders were also not disturbed by the Hon'ble Supreme Court, that the learned Single Judge allowed the petitions in the year 2003 holding that the pay-scales given to the incumbents in the past as personal pay-scales are applicable to subsequent appointees also, and that judgment was not challenged for more than three years, and that the anomalies had surfaced in July/November 1991 w.e.f. 1.1.1986

clearly indicating that the Secretary/Additional Secretary and Assistant Secretaries to the Hon'ble the Chief Justice were given lower pay-scales than the Stenographers in the selection grade, the refusal on the part of the State Government even to acknowledge that there were serious anomalies warranting removal and that in view of the conjoint effect of the above events taken together, the anomalies were required to be removed right from 1988 – such refusal was absolutely unreasonable and arbitrary on the face of it.

28. On closely looking into the matter, we, therefore, find that the additional financial burden to be worked out by taking the difference between the amounts payable as per the recommendations of the Hon'ble the Chief Justice and the amounts payable as per the pay-scales suggested in the Government letter dated 13.10.2005, if implemented as per the interim orders already passed, is not likely to be even Rs.50,000/- per annum for the entire Secretariat of the Hon'ble the Chief Justice.

29. We are also equally perplexed by the stand of the State Government as reflected in their communication dated 13/14.10.2005 that while the services rendered in the Chief Justice's Secretariat shall naturally be counted as pensionable service, the higher pay scales which may be granted to the officers in the Chief Justice's Secretariat are not to be taken into account while fixing their retiral

benefits. The statutory rules for fixation of retiral benefits have to be implemented and the petitioners' rights under such statutory rules cannot be permitted to be whittled down through such condition which must be treated as illegal and arbitrary on the face of it.

30. However, the learned counsel for the original petitioners states that in order to see that no additional financial burden is cast on the State exchequer by payment of past arrears, if the State Government acquiesces in the present judgment and if the petitioners' salaries are regularly fixed by 31st March 2007 in the pay-scales recommended by the Hon'ble the Chief Justice, the petitioners shall not claim any arrears of difference of salary and allowances or arrears of difference of pension for the period/s prior to the date/s of interim orders of this Court in the three petitions being -

(i) interim orders dated 7.7.1994/ 30.11.1994 in Special Civil Application No. 5079 of 1994,

(ii) interim order dated 1.5.2001 in Special Civil Application No. 2649 of 2001 as modified by the order dated 17.8.2001 in Letters Patent Appeal No. 768 of 2001 (which was confirmed by the Apex Court by dismissal of SLP(C) No. 20342 of 2001 on 9.1.2002), and

(iii) the order dated 2.11.2002 in Special Civil Application No. 10008 of 2001.

31. At one stage, the learned Government Pleader also made a reference to the number of posts of Additional Secretary and Assistant Secretary wondering whether there was any justification to have two Additional Secretaries and two Assistant Secretaries.

32. Apart from the fact that this attitude on the part of the officers of the State Government is not in keeping with the deference due to the high constitutional functionary who is the Head of the State Judiciary, they have even preferred to ignore the following material aspects :-

32.1 The Government itself had sanctioned creation of two posts of Additional Secretary by Government Resolutions dated 29.6.1988 and 18.12.1998, two posts of Assistant Secretary by Government Resolution dated 13.10.1988 and one post of Additional Registrar by Government Resolution dated 25.10.2004.

32.2 There has been manifold increase in the number of Courts in the State and the Judicial Officers under the Hon'ble the Chief Justice and also in the heavy workload. This will be clear from the following comparative table :-

	Number of Judges		No. of Cases			
Year	**High Court**	**Subordinate Courts (*including Labour Courts)**	**High Court (Civil, Criminal and O.J.)**		**Subordinate Courts (*including Labour Courts**	
			Institu ted	**Dis- posed**	**Insti tuted (in lacs)**	**Dispos ed (in lacs)**
1960 May to Dec.	5	201	3161	1948	N.A.	3.70
2005	42 – sanctioned 34 -Actual	896*	64268	84160	12.63	12.99*
2006 (Jan. to Sept.)	42 – sanctioned 33 -Actual	935*	50978	56770	13.28	18.33*

It is clear that while the number of Courts, Judicial Officers and the number of cases being handled by the Courts subordinate to the High Court have increased by 400%, the number of cases handled by the High Court has jumped by 2000%. It is, therefore, obvious that the administrative work of the Hon'ble the Chief Justice would increase as many times. The Officers of the State Government and their learned counsel are, therefore, not justified in doubting the need to have two Additional Secretaries

and two Assistant Secretaries in the Secretariat of the Hon'ble the Chief Justice, and that too, after having sanctioned creation of all these posts at the relevant time.

32.3 Strictly speaking, it is not open to the State Government or even to this Court on the judicial side to go into this question, as the Constitution Bench of the Apex Court has held in M. Gurumoorthy vs. Accountant General, Assam and Nagaland 1971 (2) SCC 137 and in State of UP vs. CL Agrawal, 1997 (5) SCC 1 that Article 229 contemplates full freedom to the Chief Justice of the High Court in the matter of creation of posts and appointment of Officers and servants of the High Court and their conditions of service. In the matter of creation of posts and such appointments, it is the Chief Justice or his nominee who is to be the supreme authority and there can be no interference by the executive except to the limited extent that is provided by the proviso to clause (2) of Article 229.

33. It is also clear from the foregoing discussion that when the work load has been going up by leaps and bounds, there is no justification for the Government to contend that the pre-revised pay-scale of Rs.4500-5700 was given to the then Secretary and the then Additional Secretary to the Hon'ble Chief Justice (till 1995) and the revised pay-scale of Rs.14300-18300 was given to then Additional Secretary to the Hon'ble Chief Justice

(from 1.1.1996 till death of the incumbent in 1998) but these scales are not to be given to the subsequent appointees on the posts. No material is produced to justify such invidious discrimination between the first incumbents of the post/s and the subsequent appointees.

On the other hand, when called upon, the learned Standing Counsel for the High Court has pointed out that in the letter dated 5.2.2004 to the State Government in the Legal Department, the Registrar of this Court had quoted from the Report of the Gujarat State Second Pay Commission, 1975 (Volume-III) the following duties and responsibilities of the Secretary to the Hon'ble the Chief Justice:-

> “the incumbent of the post is expected to be highly efficient and of unquestionable integrity and honesty. As Secretary to the Head of Judiciary in the State, he has to discharge manifold duties and responsibilities, many of which are of highly confidential and secret nature such as, appointments of Judicial Officers from the Bar, maintenance of confidential records of Judicial Officers, appointments of High Court Judges and the like. There can be no doubt about the very high degree of responsibility required to be shouldered by the Secretary of the Head of the State Judiciary. The incumbent of the post must be a man of confidence of the Chief Justice. Almost all the confidential communications of considerable importance of which even the Registrar may be ignorant pass through him. Thus the Secretary to the Chief Justice has to be of sufficiently high status so as to enable him to discharge his responsibilities

effectively."

The learned Standing Counsel for the High Court submitted that the Registrar of this Court had also pointed out in the letter dated 8.4.1999 to the pay anomalies committee the following duties and responsibilities of the Secretary to the Hon'ble Chief Justice:-

> "all proposals for appointment and confirmation of Honourable Judges of the High Court are emanated from the Secretariat of the Honourable the Chief Justice and the Secretary has to handle all confidential correspondence in the matter with the General Administration Department of the Government, Secretariat of His Excellency to the Governor, Secretariat of the Honourable the Chief Justice of India and the Law Ministry of the Government of India. He has also to be in touch with these offices constantly. Appointment of Law Officers of the Government are made by the Government in consultation with the Honourable the Chief Justice and the Secretary to the Chief Justice has to handle all correspondence in this behalf. He has also to handle the work relating to the Chief Justice's Conference held at New Delhi at particular intervals and has to accompany the Honourable the Chief Justice on His Lordship's inspection tours in the State and official Conferences at Delhi or at any other place. The Confidential Reports of the Officers of the higher Judicial Service i.e. City Civil Court Judges, District Judges and Assistant Judges are kept in the Secretariat of the Honourable the Chief Justice and it is maintained by the Secretary to the Chief Justice."

Developments after judgment dated 6.3.2003

34. Since the doubts about the need to have a number of officers in the Chief Justice's Secretariat and the apprehensions raised on behalf of the State Government about the alleged additional financial burden upon the State exchequer have been found to be throughly baseless, it might have been sufficient to refer to two Constitution Bench decisions of the Apex Court rendered in 1971 and 1987 and to the latest decision of the Apex Court rendered in 2004 on the interpretation of the provisions of Article 229 of the Constitution and then require the State Government to place before His Excellency the Governor the recommendations of the Hon'ble the Chief Justice for consideration afresh. However, while going through the original file of the State Government in the course of hearing the application for condoning delay of 1265 days, we were shocked to learn that although the State Government at the highest level had shown a very positive response to the recommendations of the Hon'ble the Chief Justice as far back as on 20/23/26th April, 2004, for reasons best known to them, the officers of the State Government have played a very negative role in seeing that the pay scales recommended by the Hon'ble the Chief Justice since 1992/1998 were not approved by His Excellency the Governor of Gujarat. In order to see that the exercise of reconsideration of the entire matter does not meet the same fate again, it is necessary to refer to a few notings on the file

and the communications from the Law Secretary to the Registrar General of this Court.

35. We have already referred to the first note dated 2.8.2003 of the Law Secretary recording that there was no question of filing any appeal against the decision dated 6.3.2003 of the learned Single Judge finally disposing of the three petitions. Thereafter, the Finance Department in their note dated 2/16.9.2003 raised grounds against acceptance of the recommendations of the Hon'ble the Chief Justice including those raised in the present appeals. Since those grounds travelled beyond the objections against the revision of pay-scales and sought to make inroads into the powers of the Hon'ble Chief Justice under Article 229(2) to determine other conditions of service, through the letter dated 5.2.2004 the Registrar of this Court invited the attention of the Law Secretary to the law laid down by the Constitution Bench of the Apex Court :-

> “Rule 11 of the said Rules provides for appointment to the posts of Secretary, Additional Secretary and Assistant Secretary to the Honourable Chief Justice. The Honourable Chief Justice is the sole authority to decide as to what should be the qualification of the Secretary to His Lordship and who should be the Secretary to His Lordship. The said Rule gives scope for selection of a suitable candidate for the posts according to the choice of His Lordship without any restriction of the area of choice of selection.

As regards the proposal of Government for placing the amendment in the Rules for approval of the Governor, I am directed to state that in ***M GURUMOORTY V. ACCOUNTANT-GENERAL, ASSAM AND NAGALAND & ORS.*** **(1971(2) SCC 137**), the Supreme Court has held that, "in the matter of appointments even the Legislature cannot abridge or modify the powers conferred on the Chief Justice under clause (1). The approval of the Governor, as noticed in the matter of rules, is confined only to such rules as relate to salaries, allowances, leave or pension. **All other rules in respect of conditions of services do not require his approval.**

....

As such, in His Lordship's view, no restriction can be imposed by the State Government or Governor upon the Chief Justice's powers to select and appoint the incumbents. It is also not necessary to place the Rules framed by His Lordship for appointment in High Court service for the approval of the Governor of the State.

....

The posts of Secretary and Additional Secretary are substantially higher in status carrying substantially higher responsibilities and duties, and such posts cannot be equated with posts carrying much lower responsibilities and duties and enjoying much lower status in service. The common Recruitment Rules of these posts are prescribed in order to enable the Honourable the Chief Justice to nominate or select any person according to His Lordship's choice. But it may not be taken that while exercising such discretionary powers, it would be exercised without reasonability and without taking into consideration the suitability to the post."

(emphasis supplied)

The Deputy Secretary to the State Government in the Legal Department, therefore, submitted a note dated 18.3.2004 that in view of the decision of the Apex Court in Supreme Court Employees' Welfare Association vs. Union of India, (1989) 4 SCC 187, the recommendations of the Chief Justice should be looked upon with respect and that even if the President/Governor is of the view that the approval cannot be granted to the recommendations of the Chief Justice, His Excellency cannot straightaway refuse to grant such approval. Before doing so, there must be an exchange of thoughts between the Governor and the Chief Justice of the High Court.

36. Then the file again went to the Finance Department. The note dated 13/15.04.2004 submitted by the officers in the Finance Department (pages 89 to 96 of the file) was again negative and expressed doubt as to what would happen, if one Chief Justice appoints a particular officer on the post of Secretary/Additional Secretary and the next Chief Justice replaces that officer by another officer, what would happen to the pay-scale given to the first officer. The Chief Secretary also made noting dated 17.4.2004 as under:-

> “The proposal is likely to create administrative anomalies. Hon'ble High Court should not follow principle of treating one post to confer extra benefit.

sd/-
P.K.Laheri,
17.4.2004”

When the file reached the Hon'ble Ministers, the following note (as translated from Gujarati) was made by the Hon'ble Law Minister on 20.4.2004, with which the Hon'ble Finance Minister concurred on 23.4.2004 and the Hon'ble Chief Minister accepted the same on 26.4.2004 (on page 97 of the file) :-

> “(1) The discussion meeting between His Excellency the Governor and the Hon'ble Chief Justice should be arranged, if no consensus is arrived at.
>
> (2) <u>If the condition that the Secretary and Additional Secretary to the Hon'ble Chief Justice will get the recommended pay-scales as long as they hold the posts is agreed, we may decide accordingly</u>.”
>
> (emphasis supplied)

The decision, therefore, of the State Government taken at the highest level on 26.4.2004 was that if the Hon'ble the Chief Justice accepts the suggestion that only the incumbents of the posts should get the recommended pay-scales but upon those persons ceasing to hold the posts, they should not continue to get the recommended pay-scales, then the State Government was accepting the recommendations of the Hon'ble the Chief Justice.

37. Unfortunately, the above decision of the State Government taken at the highest level on 26.4.2004 was not brought to the notice of the Hon'ble the Chief Justice, as stated by Mr Pardiwala, learned standing counsel for the High Court, under instructions from Mr GR Udhwani, Law Officer of the High Court. It is stated by Mr Pardiwala, learned standing counsel for the High Court, under instructions, that if the above condition suggested in pare (2) of the State Government decision dated 26.4.2004 was communicated to the Hon'ble the Chief Justice at the relevant time, the same would have been immediately accepted as the suggestion was reasonable and the Hon'ble the Chief Justice had no reason for not accepting such suggestion if at all it were communicated.

It clearly appears that it was on account of the above positive decision of the State Government at the highest level on 26.4.2004 that on 29.4.2004, the learned Single Judge passed the following order in Misc. Civil Application No. 66 of 2004 :-

> “Mr AD Oza, Ld. GP places on record the affidavit of the Under-Secretary, Legal Dept stating that the file is cleared at the level of Hon'ble the Chief Minister and is now forwarded to His Excellency, the Governor of Gujarat for necessary decision. Said affidavit is taken on record. S.O. to 25.06.04 for reporting further progress in the matter.”
>
> (emphasis supplied)

It appears that in view of the aforesaid decision taken by the State Government on 26.4.2004, nothing further was required to be done except communication of the suggestion made in the said decision which the Hon'ble the Chief Justice would have immediately accepted.

38. After the decision was taken by the Hon'ble Chief Minister on 26.4.2004, the file went to His Excellency the Governor who approved the following note dated 13.5.2004 of the Principal Secretary to His Excellency (page 99 of the file):-

> "(2) The suggestion made vide para (1) on page 97/cs is to the effect that the discussion meeting between H.E. And Hon'ble Chief Justice should be arranged if we don't agree with the question under consideration. However what is proposed vide para (2) on page 97/cs appears to be partial and conditional approval to the rules, in as much as it is proposed that if the condition that the Secretary and Addl. Secretary to Hon'ble Chief Justice may get the proposed scale as long as they are holding those posts is agreed to, then we may decide accordingly. In view of this position as to whether above condition is acceptable to Hon'ble Chief Justice needs to be first ascertained before the matter could be further processed and a definite proposal for approval to rules needs to be framed."
>
> (emphasis supplied)

The file then went to the Law Secretary on 14.5.2004.

39. In view of the aforesaid Government decision arrived at on 26.4.2004 and the aforesaid note of His Excellency the Governor, the Law Secretary was simply expected to seek the clarification from the High Court as to whether the above suggestion was acceptable to the Hon'ble the Chief Justice (that the Secretary and Additional Secretary to the Hon'ble the Chief Justice will get the recommended scale only as long as they are holding the posts). However, in the note dated 17.5.2004 (pages 104 to 109 of the file), the Law Secretary only discussed the modalities of the discussion meeting between His Excellency the Governor and the Hon'ble the Chief Justice and did not even refer to the necessity of communicating to the Hon'ble the Chief Justice the suggestion made in the State Government decision dated 26.4.2004. If such a simple communication had been sent by the Law Secretary to the Registrar of this Court, the crease would have immediately been ironed out. However, instead the Law Secretary noted that the matter be placed before the Government for taking a decision on Finance Department's noting at page 89/NS to 96/NS (on which the decision was already taken by the Hon'ble Chief Minister on 26.4.2004 – page 97) and then be forwarded to His Excellency. The Law Secretary made the following statement in the said note dated 17.5.2004 (page 107-108):-

"In view of the above and qua clarifications

sought by the P.S. to H.E., it may be stated that any definite decision on the subject has not been taken on the file at the highest level of the State Government as to whether the proposal of High Court contained in letter dt. 5/2/04 has been accepted or not. Under the circumstances, following course needs to be followed :

(1) A definite decision would be required to be taken on the file at the highest level of State Government on the proposal of the High Court.

(2) The said decision then would be required be forwarded to H.E. For necessary approval as per article 229 of the Constitution.

(3) If the proposal of High Court is not approved by H.E. an exchange of thoughts should take place between H.E. and the C.J. before communicating the non-approval of the proposal ....."

(emphasis supplied)

[There is no reason indicated in the note why the decision of the Government at the highest level taken on 26.4.2004 on page 97 or the suggestion in para (2) thereof was not communicated to the Hon'ble the Chief Justice].

The Law Secretary concluded as under (page 109):-

"The matter be placed before the Government for taking the decision of F.D's note at page 89/NS to 96/NS and then be forwarded to H.E."

Although reference is made in the beginning of the said note dated 17.5.2004 to the decision of

the State Government at the highest level taken on 26.4.2004 (page 97), the note still proceeds on the basis as if no decision was taken on F.D.'s note at page 89/NS to 96/NC (dated 13/15.4.2004).

40. The aforesaid note dated 17.5.2004 of the Law Secretary appears to have led the then Chief Secretary to the Government to believe that the Hon'ble Chief Justice did not accept the condition suggested in the Government decision dated 26th April 2006 on page 97 of the file. The reason for this inference is the tenor of the following note made by the then Chief Secretary on 19.5.2004 which came to be approved by the Hon'ble Minister for Law and the Hon'ble Minister for Finance on 19th May and by the Hon'ble the Chief Minister on 26th May and by His Excellency the Governor on 29 May 2004 – (as translated from Gujarati) -

> "There are specific provisions in the Indian Constitution for Legislature, the Executive and the Judiciary. There are various judgments on the question of appointments by the Judiciary and regarding the facilities to be given and expenditure to be incurred for the Judiciary. Some of these judgments do not appear to be consistent with the basic structure of the Constitution, particularly when there is no provision for expenditure from the public exchequer without the demands being approved by the Legislature. In such circumstances, it would not be proper to expect that all should accept **without any reservation** the decisions of the Court which adversely affect the constitutional framework or the Legislature

> which comprises of elected representatives of the people. His Excellency the Governor has after consideration suggested that it may be made convenient to have discussions on the question. Hence the Hon'ble the Chief Justice may be requested through the Registrar of the Gujarat High Court that His Lordship may make it convenient to have discussions with His Excellency the Governor.
>
> Sd/-PK Laheri,
> Chief Secretary 19.5.04"
>
> [emphasis supplied]

41. It appears that thereafter the exchange of thoughts took place between His Excellency the Governor (aided by several Secretaries to the Government of Gujarat) and the Hon'ble the Chief Justice and ultimately by communication dated 13/14.10.2005 (page 192 of the paper book), the Law Secretary communicated the justification for virtually rejecting the recommendations of the Hon'ble the Chief Justice in the following terms :-

> " ....
>
> If the existing position is borne in view, the present incumbents on the posts of Secretary, Additional Secretary or Assistant Secretary are from the cadre of Stenographers in the High Court of Gujarat (may be they are in the different pay scales but basically they all belong to the cadre of Stenographers). .....
>
> If the analogy is drawn with the Stenographers in the State Secretariat (who

> also work in the Chief Secretary's Secretariat, CM's Secretariat and even in the Raj Bhavan, the designations of the Stenographers in the above mentioned three pay scales are "Private Secretary", "Private Secretary" and "Principal Private Secretary" respectively. It should be remembered that the scale of Rs.8500-14000 is available only to those stenographers who have put in minimum 9 years of qualifying service and is given not as "promotion" but as a "Higher Grade". The third scale of Rs.10000-15200 is not available to all the Stenographers, but is restricted only to the 20% of total cadre strength of Stenographers Gr. I and is given as "promotion" to those who have completed minimum 15 years of service and subject to the upper ceiling of 20% posts.
>
> These two set ups (one obtaining in the High Court and the other prevailing in the State Government) need to be juxtaposed to have a real picture of the entitlement of pay scales. As stenographer working as "Private Secretary" or "Principal Private Secretary" to a Secretary/Principal Secretary/ Additional chief Secretary/Chief Secretary to Government or working in the CM's office or working in Raj Bhavan is firstly a part of a Cadre of Stenographers which is governed by specific rules and regulations. If a person is borne on the cadre and belong to cadre of Stenographers, his conditions of service including the pay-scales are governed by the rules and regulations applicable to that Cadre. A Stenographer working in the CM's Office or in Raj Bhavan cannot be entitled to or cannot claim a higher pay-scale **just because of his being in that office."**
>
> [emphasis supplied)

42. Considering the context in which the remarks

are made, the innuendo is too obvious to require any elaboration. Even as a note on the Government file coming from any other officer of the State Government, it would have been treated as “not in good taste”; most unfortunately it is to be found in the letter from the Law Secretary to the Hon'ble Chief Justice through the Registrar General of this Court. We only wish the Law Secretary was alive to the role required to be played by the incumbent of this important post. As observed by the Hon'ble Supreme Court in Gauhati High Court vs. Kuladhar Phukan, (2002) 4 SCC 524 :-

> 'In almost all the States and Union Territories in the country services of judicial officers are loaned by High Courts to the Governments for being utilized in litigation, judicial, law and legislative affairs departments of the Governments, by whatever name the departments may be called. The Secretary (Law) or a Legal Remembrancer serving under the Government though is a judicial officer whose services have been placed at the disposal of the Government by the High Court has a crucial role to play. He is a vital link of communication between the High Court and the Government and his relationship with the two wings strategically enables a healthy and appropriate relationship being maintained between the two.”
>
> [emphasis supplied]

43. The Law Secretary's letter dated 13/14.10.2005 thereafter stated as under :-

However, considering the long history of litigation, orders/interim orders passed by the Hon'ble High Court in some individual cases and in view of the proposal made by the Hon'ble the Chief Justice it is decided that the person working in the Secretariat of Hon'ble Chief Justice either as Secretary or Additional secretary or Assistant Secretary, with prospective effect will get one step higher pay-scale than the cadre pay-scale of Stenographer so long as he continues to be in the said office subject to the following conditions :-

(i) The persons getting benefit of such higher pay-scale during his tenure in the Chief Justice's Secretariat will get reverted back to the cadre pay-scale as soon as he is sent out of the Chief Justice's Secretariat and deployed to the parent cadre.

(Court's Note : this condition (i) should have been sent by the Law Secretary as an independent query to the Hon'ble the Chief Justice in May 2004, as discussed in paras 36 to 40, and not as one of several conditions in what appears to be a counter proposal)

(ii) The period spent in the Chief Justice's Secretariat will be counted for the purpose of qualifying service, pension, increment, etc. as it happens in the cases of deputation outside the cadre.

(iii) If a person retires while working in the Chief Justice's Secretariat, the terminal benefits payable to him will be with

reference to his cadre pay-scale and not with reference to the higher pay-scale which he draws because of being in the Chief Justice's Secretariat.

(Court's note : the above condition (iii) is discussed in para 29 of this judgment)

(emphasis supplied)

44. The views of His Excellency on the proposal of the Hon'ble the Chief Justice :-

44.1 By the said letter dated 13/14.10.2005, the Law Secretary also communicated to the Registrar General that His Excellency the Governor took the view that the requirement of the approval of the Governor as envisaged in the provisions of Article 229(2) arises only if a Rule relating to salaries etc. is sought to be made and that, therefore, the proposal sent was not a proposal requiring his approval.

44.2 It appears that the said decision was taken by His Excellency the Governor because earlier the Legal Department had requested the High Court to amend the Rules particularly Rule 11 of the High Court of Gujarat (Recruitment and Conditions of Service of Staff) Rules, 1992 which read as under :-

Before Amendment After Amendment dtd. 01.11.2004

11.	Appointment to the post of Secretary to the Hon'ble Chief Justice, Additional Secretary to the Hon'ble the Chief Justice and Assistant Secretary to the Hon'ble the Chief Justice be made either by selection from the establishment of the High Court or nomination by the Hon'ble the Chief Justice.	"Rule 11. The Secretariat of the Chief Justice shall consist of the following posts :- 1. Additional Registrar-cum-Principal Private Secretary. 2. Secretary to the Hon'ble the Chief Justice. 3. Additional Secretary to the Hon'ble the Chief Justice. 4. Assistant Secretary to the Hon'ble the Chief Justice. (I) Appointment to the post of Additional Registrar-cum-Principal Private Secretary shall be made by the Hon'ble the Chief Justice by nomination from the Officers working in the Secretariat of the Hon'ble the Chief Justice or otherwise. (II) Appointment to the post of Secretary to the Hon'ble the Chief Justice, Additional secretary to the Hon'ble the Chief Justice and Assistant Secretary to the Hon'ble the Chief Justice shall be made either by selection from the establishment of the High Court or nomination by the Hon'ble the Chief Justice.

44.3 The following decision was taken by H.E. the Governor (on 5th October, 2005) :-

> “On careful consideration of papers and the above proposal in light of the provision of Article 229(2) of the Constitution of India and the discussions with the Secretary and the Officers of the Legal Department and General Administration Department held today, it appears to me that this not a proposal requiring my approval.
>
> Requirement of the approval of the Governor as envisaged in the provisions of Article 229(2) arises only if a Rule relating to salaries etc. is sought to be made. This not being the case, I am neither expected nor enabled by the above Constitutional provision to accord my approval to the proposed move/proposal.”
>
> (emphasis supplied)

45. In view of the above decision of His Excellency, by letter dated 16.12.2005, the Registrar General of this Court sent the proposal of the Hon'ble the Chief Justice in the form of Draft Rules under Article 229 of the Constitution (with a preamble setting out the history and background facts) for amendment to the High Court of Gujarat (Recruitment & Conditions of Service of Staff) Rules, 1992 :-

> “The Hon'ble Chief Justice is pleased to prescribe, with the approval of the Governor, the following pay-scales to the posts mentioned herein below in the Secretariat of the Chief Justice :-
>
> From 13.11.1988 to 31.12.1995

1	Secretary to Hon'ble Chief Justice	Rs.4500-5700
2	Additional Secretary to the Hon'ble Chief Justice	Rs.4500-5700
3	Assistant Secretary to the Hon'ble the Chief Justice	Rs.3500-5000

From 01.01.1996 to 31.10.2004

1	Secretary to Hon'ble Chief Justice	Rs.14300-18300
2	Additional Secretary to the Hon'ble Chief Justice	Rs.14300-18300
3	Assistant Secretary to the Hon'ble the Chief Justice	Rs.12000-16500

From 01.11.2004 till the new revision is effected

1	Additional Registrar cum Principal Private Secretary	Rs.16750-20500
2	Secretary to the Hon'ble the Chief Justice	Rs.14300-18300
3	Additional Secretary to the Hon'ble the Chief Justice	Rs.14300-18300

4	Assistant Secretary to the Hon'ble the Chief Justice	Rs.12000-16500

Provided that, if an officer having a higher pay-scale is appointed, by selection or deputation or nomination of any of the above posts, he shall carry the same pay-scale he was drawing in his original cadre."

46. In response to the above letter of the Registrar General, the Law Secretary stated in the letter dated 7.6.2006 is as under (this entire para is reproduction of the said letter) :-

"The proposal made by the Hon'ble High Court of Administrative side vide letter dt. 16/12/2005 along with the draft amendment in the Rule – 11 of the High Court of Gujarat (Recruitment and Conditions of Service of Staff) Rules, 1992 was considered at length by the committee comprising of ACS (Additional Chief Secretary), Finance Department; ACS, General Administrative Department; Principal Secretary (Expenditure), Finance Department; Secretary & RLA, Legal Department; Additional secretary, Finance Department and Deputy Secretary (Services), General Administration Department, in the meeting held on 04/3/2006. The said Committee made following observations :

(i) Existing Rule 11 of the High Court of Gujarat (Recruitment & Conditions of Service of Staff) Rules, 1992, inter alia, provides that the appointments to the posts of Secretary/Additional Secretary/Assistant Secretary to the Hon'ble the Chief Justice shall be made either by selection from the establishment of the High Court or nomination by the Hon'ble the Chief

Justice. Thus, there are only two modes of recruitment as mentioned in the said rule: (i) selection from the establishment of the High Court; and (ii) nomination. There is no proposal to amend this particular provision. It was felt that if the higher pay scales are to be given, the persons to be recruited should possess higher qualifications and specialized knowledge/expertise to justify the grant of higher pay scale. The proposal from the Hon'ble High Court does not mention anything about prescription of higher qualifications or specialized knowledge/expertise for appointment to the posts under reference.

(ii) The existing Rules do not make any mention about the pay scales of any post in the High Court. The pay scales have been prescribed by the Legal Department of the Government by separate notifications from time to time. The present proposal from the Hon'ble High Court is for prescription of pay scales in the Rules for a particular category of staff.

(iii) The amendment prescribing higher pay scales for the posts under reference is proposed to be given retrospective effect from 7th July, 1994.

(iv) In none of the Recruitment Rules for Government staff, the pay scales of the posts are mentioned. The pay scales are always prescribed separately by the F.D. under the Revision of Pay Rules and they cannot be a part of Recruitment Rules.

(v) The duties and responsibilities of the post decide as to what should be the

pay scale of the post and whenever it is proposed to raise the pay scale, it is necessary to justify it through all the relevant aspects such, as the duties and responsibilities and/or higher qualifications or specialized knowledge/expertise hierarchical requirement etc.

(vi) If the proposal from the High Court is perused carefully, it will be seen that it merely proposes the higher pay scales with retrospective effect for the personal staff of the Chief Justice which cannot be considered as amendment in the existing rule because, the existing rule prescribing the modes of recruitment remains unaltered and a new rule prescribing higher pay-scales is proposed to be interpolated. The point at issue is that for justifying the higher pay scales, the existing provisions of Rule 11(II) should be amended. Mere proposal for interpolating a sub-rule to provide for higher pay scales to the **personal staff** cannot be considered an amendment in the Rules under Article 229 of the Constitution of India.

In view of the said observations the members of the Committee made following recommendations (on 4.3.2006) :-

"(a) That the present proposal does not qualify to be an amendment in the existing Recruitment Rules framed under Article 229 of the Constitution of India, and

(b) It is difficult to recommend the acceptance of the proposal for raising the pay scales of the personnel staff of Chief Justice as proposed by the Hon'ble High Court vide letter dated 16/12/2005 as no justification, has

> been given for such upward revision of pay scales."

It is stated that the above observations of Committee were placed before the Government at the Highest level and before H.E. the Governor of Gujarat for appropriate orders. On considering the papers, H.E. the Governor observed as under (on 13.3.2006) :-

> "On careful consideration of papers, the present proposal does not qualify to be an amendment in the existing Recruitment Rules framed under Article 229(2) of the Constitution of India.
>
> Requirement of the approval of the Governor as envisaged in the provisions of Article 229(2) arises only if a Rule relating to salaries etc. is sought to be made or amended. This not being the case, I am neither expected nor enabled by the above Constitutional provision to accord my approval to above proposal."

In view of the above decision of His Excellency of the Government, I am directed to state that the proposal of the High Court on Administrative side vide letter dt.16/5/2005 (sic – 16.12.2005) has not been accepted by the Government. You are, therefore, requested to place the above views of the Government before the Hon'ble Chief Justice and other Hon'ble Judges of the High Court of Gujarat for their kind perusal and consideration."

(emphasis supplied)

47. The matter rested there on the file. The learned Single Judge was constrained to pass order dated 5.7.2006 quoted in para 21.4 hereinabove. Since there was no compliance even thereafter the learned Single Judge passed order dated 2.8.2006

requiring the Chief Secretary to the Government of Gujarat to remain present before the Court in the proceedings being Misc. Civil Application No. 66 of 2004. It is thereafter that the State Government filed the present Letters Patent Appeals challenging the order dated 2.8.2006 and the judgment dated 6.3.2003.

FURTHER DISCUSSION

48. As already indicated earlier (paras 36 to 40), the Government at the highest level already having taken the decision on 26.4.2004, all that was required to be communicated to the Hon'ble the Chief Justice was whether the Hon'ble the Chief Justice would accept the suggestion that only the incumbents of the posts in the Secretariat of the Hon'ble Chief Justice would get the recommended pay-scales and not the officers who cease to hold the posts on account of transfer to other posts. The Hon'ble Chief Justice would have immediately accepted the same as stated by the learned standing counsel for the High Court.

However, it appears that the officers in the State Government Secretariat were simply seeking to make inroads into the power of the Hon'ble the Chief Justice under Article 229 of the Constitution which provisions do not enable, much less empower, the State Government to call upon the Hon'ble the Chief Justice to submit to the inquiries or submit the kind of justification demanded by the committee of

Secretaries vide the Law Secretary's letter dated 7.6.2006.

49. It was as far back as in 1971 that the Constitution Bench of the Hon'ble Supreme Court in M. Gurumoorthy vs. Accountant General, Assam and Nagaland, 1971 (2) SCC 137 held in the following emphatic terms :-

> "11. The unequivocal purpose and obvious intention of the framers of the Constitution in enacting Article 229 is that in the matter of appointments of officers and servants of a High Court it is the Chief Justice or his nominee who is to be the supreme authority and there can be no interference by the executive except to the limited extent that is provided in the Article. **This is essentially to secure and maintain the independence of the High Courts.** The anxiety of the Constitution-makers to achieve that object is fully shown by putting the administrative expenses of a High Court including all salaries, allowances and pension payable to or in respect of officers and servants of the Court at the same level as the salaries and allowances of the Judges of the High Court nor can the amount of any expenditure so charged be varied even by the legislature. Clause (1) read with Clause (2) of Article 229 confers exclusive power not only in the matter of appointments but also with regard to prescribing the conditions of service of officers and servants of a High Court by Rules on the Chief Justice of the Court. This is subject to any legislation by the State Legislature but only in respect of conditions of service. In the matter of appointments even the legislature cannot

> abridge or modify the powers conferred on the Chief Justice under Clause (1). The approval of the Governor, as noticed in the matter of Rules, is confined only to such rules as relate to salaries, allowances, leave or pension. All other rules in respect of conditions of service do not require his approval. Even under the Government of India Act the power to make rules relating to the conditions of service of the staff of the High Court vested in the Chief Justice of the Court under S. 242 (4) read with S. 241 of the Government of India Act, 1935.
>
> 12. ..... Thus Article 229 has a distinct and different scheme and contemplates full freedom to the Chief Justice in the matter of appointments of officers and servants of the High Court and their conditions of service. These can be prescribed by rules made by him. Apart from the special situation contemplated by the proviso to clause (1) the only exception is that the Governor's approval must be sought to the extent the rules relate to salaries, leave or pension. This exception, it is abundantly clear, has to be made because the finances have to be provided by the Government and to the extent there is any involvement of expense the Government has to approve of it."
>
> [emphasis supplied]

50. Again in State of U.P vs. CL Agrawal, (1997) 5 SCC 1, the Constitution Bench of the Apex Court has held as under :-

> "12. Article 229 does not state that posts in the High Court are to be created by the Governor; it does not even deal with the creation of posts. Clause (1) thereof

> empowers the Chief Justice to make the appointments of officers and servants of a High Court. Clause (2) empowers the Chief Justice to make rules prescribing the conditions of service of officers and servants of a High Court with the proviso that so far as these rules relate to salaries, allowances, leave or pensions, they require the Governor's approval. Clause (3) requires the administrative expenses of the High Court to be charged upon the Consolidated Fund of the State."
>
> [emphasis supplied)

Thereafter in several other decisions the Apex Court has reiterated the above position, the last being the three Judge Bench decision in Union of India vs. SB Vohra, (2004) 2 SCC 150 laying down :-

> 11. Independence of the High Court is an essential feature for working of the democratic form of government in the country. An absolute control, therefore, has been vested in the High Court over its staff which would be free from interference from the Government subject of course to the limitations imposed by the said provision. There cannot be, however, any doubt whatsoever that while exercising such a power the Chief Justice of the High Court would only be bound by the limitation contained in clause (2) of Article 229 of the Constitution of India and the proviso appended thereto. Approval of the President/Governor of the State is, thus, required to be obtained in relation to the rules containing provisions as regards salary, allowances, leave or promotion. <u>It is trite that such approval should ordinarily be granted as a matter of course.</u>
>
> 46. Decisions of this Court, as discussed hereinbefore, in no unmistakable

terms suggest that it is the primary duty of the Union of India or the State concerned normally to accept the suggestion made by a holder of a high office like a Chief Justice of a High Court and differ with his recommendations only in exceptional cases. The reason for differing with the opinion of the holder of such high office must be cogent and sufficient. Even in case of such difference of opinion, the authorities must discuss amongst themselves and try to iron the differences. The appellant unfortunately did not perform its own duties.

48. It has to be further borne in mind that it is not always helpful to raise the question of financial implications vis-a-vis the effect of grant of a particular scale of pay to the officers of the High Court on the ground that the same would have adverse effect on the other employees of the State. Scale of pay is fixed on certain norms; one of them being the quantum of work undertaken by the officers concerned as well as the extent of efficiency, integrity etc. required to be maintained by the holder of such office. This aspect of the matter has been highlighted by this Court in the case of the judicial officers in All India Judges' Assn. vs. Union of India as well as the report of the Shetty Commission.

49. The matter as regards fixation of scale of pay of the officers working in the different High Courts must either be examined by an expert body like the Pay Commission or any other body but in absence of constitution of any such expert body the High Court itself is to undertake the task keeping in view the special constitutional provisions existing in this behalf in terms of Article 229 of the Constitution of India.

....

> 51. Having regard to the aforementioned authoritative pronouncements of this Court, there cannot be any doubt whatsoever that the recommendations of the Chief Justice should ordinarily be approved by the State and the refusal thereof must be for strong and adequate reasons. In this case the appellants even addressed themselves on the recommendations made by the High Court. They could not have treated the matter lightly. It is unfortunate that the recommendations made by a high functionary like the Chief Justice were not promptly attended to and the private respondents had to file a writ petition. The question as regards fixation of a revision of the scale of pay of the High Court being within the exclusive domain of the Chief Justice of the High Court, subject to the approval, the State is expected to accept the same recommendations save and except for good and cogent reasons."
>
> [emphasis supplied)

51. We may add that the purpose of object of requiring approval of the Governor in the proviso of Article 229 (2) is only to enable the State Government to find out the financial burden involved in acceptance of the proposal and not to require the Chief Justice to surrender his freedom under clauses (1) and (2) of Article 229 of the Constitution to the Secretaries of the State Government, not to require the Chief Justice to mend the Recruitment Rules nor to justify his recommendations as if the Chief Justice's Secretariat is one of the departments of the State Government. In Pradyat Kumar Bose vs. The Hon'ble Chief Justice of Calcutta High Court, AIR 1956 SC 285, the Apex Court has examined various

Articles of the Constitution and held that by using different pharaseology, the Constitution makers have demarcated the staff of the High Courts from the other civil services of the Union or the State. In State of Maharashtra vs. Association of Court Stenos., P.A., P.S., (2002) 2 SCC 141 also the Apex Court has held that on a plain reading of Article 229(2), it is apparent that the Chief Justice is the sole authority for fixing the salaries, etc. of the employees of the High Court, subject to the Rules made under the said Article. Such rules made by the Chief Justice will be subject to the provisions of any law made by the legislature of the State and the Rules relating to salaries, allowance, leave or pension would require the approval of the Governor, but apart from any power conferred by the Rules framed under Article 229, the Government cannot fix the salary or authorise any particular pay-scale of an employee of this High Court. It is always expected that when the Chief Justice of a High Court makes rules providing a particular pay-scale for its employees, the same should be ordinarily approved by the Governor, unless there is any justifiable reason not to approve the same. It appears from the tenor of the notings on the file, the observations of the Committee of Secretaries and the letters of the Law Secretary that they have all along been treating the High Court as merely a department of the State Government and the Secretariat of the Hon'ble the Chief Justice as a group of Stenographers working as personal staff of the Chief Justice. To say the least

and in the mildest terms, this attitude runs counter to the letter and spirit of Article 229 as interpreted by the two Constitution Benches of the Apex Court and the three Judge Bench in Union ofIndia vs. SB Vohra, (2004) 2 SCC 150.

52. It is clear that prior to their appointment on the post of Assistant Secretary to the Hon'ble the Chief Justice the pay-scale of the post of Stenographer Grade-I (Selection Grade) which the petitioners were earlier holding was Rs.10000-15200. Nine out of ten officers concerned were drawing pay at a stage higher than the minimum in the scale of Rs.12000-16500 (pre-revised Rs.3500-5000) recommended by the Hon'ble the Chief Justice for the post of Assistant Secretary. There were clear anomalies under which the Secretary/ Additional Secretaries to the Hon'ble the Chief Justice and Assistant Secretaries to the Hon'ble the Chief Justice were placed by the State Government in the scale of Rs.8500-14000 whereas the Stenographers Grade-I in the selection grade were drawing salary in the scale of Rs.10000-15200. These anomalies are required to be considered in the backdrop of the fact that the first incumbent of the post of Secretary to the Hon'ble the Chief Justice and the first incumbent of the post of Additional Secretary to the Hon'ble the Chief Justice were already granted higher pay-scales of Rs4500-5700 revised to Rs.14300-18300 as personal scales (till their death in 1995 and 1998 respectively) which the Hon'ble the Chief Justice recommended on 29.6.1992

and 9.9.1998.

53. As the matter is pending consideration since 1992, we cannot help observing that on the facts narrated in paras 3 to 10, highlighted in paras 24 to 33 and further summarized in the charts annexed to this judgment, we are sure that neither Dr.B.R.Ambedkar nor Shri T.T.Krishnaramachari would have considered recommendations of the Hon'ble Chief Justice under consideration as undesirable. We are referring to these two eminent Constitutional Framers because their speeches in the Constituent Assembly Debates explaining the rationale of inserting a similar proviso to Article 146(2) (original draft Art. 122) and the proviso to Article 229(2) (as quoted in paras 69 and 70 of the decision in Supreme Court Employees Welfare Association Vs. Union of India, 1989(4) SCC 187=AIR 1990 SC 334) have been relied upon by the learned Advocate General in the course of arguments -

53.1 In the said decision the Apex Court had to consider the claim of its Class III and Class IV employees for revision of pay-scales without the Hon'ble the Chief Justice of India having framed any Rules under Article 146. The Apex Court disposed of the matter after recording the statement of the learned Attorney General that the Hon'ble the Chief Justice of India would frame the rules under Article 146(2) and forward the same to His Excellency the President and after making certain observations.

The apprehension of the Government of India was the likely impact of any final orders in favour of Supreme Court Class III and Class IV employees on the demand of similar pay-scales by a large number of Class III and Class IV employees in the Central Government.

We can take judicial note of the fact that the overwhelming majority of the Government staff running into lacs of them are holding Class III and Class IV posts. **In the present case we are only concerned with revision of pay-scales of Class I officers in the Chief Justice's Secretariat.**

53.2 On the facts noticed by the learned Single Judge and by us, the decision in Supreme Court Employees Welfare Association (supra) does not go against the petitioners. As already pointed out hereinabove, the first incumbents of the posts of Secretary/Additional Secretary to the Hon'ble the Chief Justice were already granted the higher pay-scales till their death in 1995/1998. The Stenographers Grade-I in the Selection Grade are given scale of Rs.10000-15200 but persons from that cadre appointed to the higher post of Assistant Secretary or to the still higher post of Secretary/Additional Secretary to the Hon'ble Chief Justice and given lower scale of Rs.8500-14300.

53.3 The two Judge Bench decision in Supreme Court Employees Welfare Association case has already been considered by the three Judge Bench in Union of India vs. SB Vohra, (2004) 2 SCC 150 (paras 17 and 48). As regards the question of parity with the Government staff, the three Judge Bench in SB Vohra's case has made the following observations :-

> "48. It has to be further borne in mind that it is not always helpful to raise the question of financial implications vis-a-vis the effect of grant of a particular scale of pay to the officers of the High Court on the ground that the same would have adverse effect on the other employees of the State. Scale of pay is fixed on certain norms; one of them being the quantum of work undertaken by the officers concerned as well as the extent of efficiency, integrity etc. required to be maintained by the holder of such office....."
>
> (emphasis supplied)

53.4 We are also of the view that the nature of duties and responsibilities of the officers in the Chief Justice's Secretariat cannot be compared with those of the Secretaries to the Chief Secretary/Additional Secretaries and other functionaries in the Executive and the Legislature.

54. Lastly we may refer to the submission of the learned Government Pleader at the fag end that the decision dated 26 April 2004 on page 97 of the file only dealt with the question of pay-scale of

Secretary/ Additional Secretaries to the Hon'ble the Chief Justice but not with the pay-scale of Assistant Secretaries to the Hon'ble Chief Justice.

55. We are of the view that the decision of the State Government at the highest level taken on 26th April 2004 (page 97 of the file) did not intend to exclude the post of Assistant Secretary to the Hon'ble the Chief Justice from the scope of the proposed consensus.

55.1 In the first place, the decision dated 26.4.2004 (on page 97 of the file) is required to be read in the context of the notings of the Finance Department dated 13/15 April 2004 (pages 89 to 96 of the file) wherein reference is made to all the three posts and not merely to the posts of Secretary/Additional Secretaries to the Hon'ble the Chief Justice. Common objections were raised against revision of pay-scales of all the three posts- Secretary, Additional Secretary and Assistant Secretary. The Finance Department's note dated 13/15 April 2004 on which the Hon'ble Ministers and the Hon'ble Chief Minister took the above decision, had clearly raised a doubt in the penultimate para (page 95) that if one Chief Justice appoints an officer as his Secretary, Additional Secretary or Assistant Secretary and upon transfer of the said Chief Justice, if the incoming Chief Justice transfers that officer, such officer may continue to retain the higher pay-scale even after ceasing to hold the post

of Secretary/Additional Secretary/Assistant Secretary to the Hon'ble the Chief Justice. Merely because the note dated 20/4 of the Hon'ble Law Minister refers to “posts of Secretary and Additional Secretary to the Hon'ble the Chief Justice”, (at the same time, the note did not contain any other decision for the pay-scale for the post of Assistant Secretary), it did not appear to be the intention of the Hon'ble Ministers/ Hon'ble Chief Minister to exclude the post of Assistant Secretary in the matter of arriving at the consensus by suggesting the condition that only the incumbent of the post should get the recommended pay-scale.

55.2 At the hearing of the appeals also, the learned Advocate General was not in a position to submit any valid ground in support of the submission that the decision of the State Government taken on 26.4.2004 should be confined to acceptance of the recommended pay-scale only for the post of Secretary/ Additional Secretary and that the said decision was not applicable or should not be applied to the post of Assistant Secretary which was very much part of the controversy decided by the judgment dated 6.3.2003 of the learned Single Judge and which also formed part of the Finance Department's note dated 13/15.4.2004 on which the State Government had taken a very important decision on 26.4.2004.

Even so, if any other view could be permitted to be taken, it could be only by the

Hon'ble Minister for Law, the Hon'ble Minister for Finance and the Hon'ble Chief Minister and it was not for any officer of the State Government, whether an individual officer or even any Committee of Secretaries, to take a different view.

How the proceedings have been conducted by State Govt. officers

56. In view of the developments discussed hereinabove, the learned counsel for the original petitioners have submitted that this Court may initiate action against the Law Secretary to the State Government for contumacious acts of omission and commission. The learned counsel for the petitioners has also referred to the order dated 30.1.2006 of the learned Single Judge accepting the request of the learned Advocate General for permission to delete the objectionable paragraphs in the affidavit dated 21.1.2006 of the Deputy Secretary to the Legal Department. In spite of the statement made by the learned Advocate General as recorded in the said order that the State Government shall not take into consideration the contents of the objectionable paragraphs of the said affidavit, those contents are directly or indirectly considered by the Committee of Secretaries on 4.3.2006 as reflected in the letter dated 7.6.2006 of the Law Secretary to the Registrar General.

57. The learned Advocate General, relying upon the decision of the Apex Court in State of Bihar Vs.

Kripal Shanker JT 1987(3) SC 49 = AIR 1987 SC 1554 and the decision of the Jammu & Kashmir High Court in L.Tirath Ram Vs. His Highness's Governor, Jammu & Kashmir AIR 1954 J&K 11, has submitted that for the notings made by the Secretary on the file, even criticising the judgment of a Court, no contempt proceedings can be initiated.

58. While accepting the above submission of the learned Advocate General as the correct legal principle, we are afraid the acts of commission and omission have not remained mere notings on the file.

We are sorry to note that the unpleasant disagreements and the proceedings before this Court for the last two years could have been easily averted if the Law Secretary and Remembrancer of Legal Affairs had brought to the notice of the Hon'ble the Chief Justice of this Court, through the Registrar, the decision of the State Government taken at the highest level on 26.4.2004 and inquiring whether the Hon'ble the Chief Justice was agreeable to the suggestion made in para (2) of the said decision. Far from not inviting the attention of the Hon'ble the Chief Justice to such an important decision, the Law Secretary went on the committee of Secretaries which did nothing short of finding faults with the recommendations of the Hon'ble the Chief Justice made since 1992/1998 and conveyed the same to the Hon'ble the Chief Justice through letters dated 13/14.10.2005 and 7.6.2006, inter alia, treating the Secretary,

Additional Secretaries and Assistant Secretaries to the Hon'ble the Chief Justice as nothing but a group of Stenographers working as personal staff of the Hon'ble Chief Justice and making an innuendo that they were claiming higher pay-scales recommended by the Hon'ble the Chief Justice merely because they happened to be in the Chief Justice's Secretariat. The contents and the tenor of the letters dated 13/14.10.2005 and 7.6.2006 of the Law Secretary are not only in bad taste but they also run counter to the provisions of Article 229(2) of the Constitution as interpreted by the Constitution Bench of the Hon'ble Supreme Court right from M. Gurumoorthy vs. Accountant General, Assam and Nagaland, 1971 (2) SCC 137 and several other decisions referred to hereinabove.

59. Even at the hearing of these appeals, the two notes submitted on behalf of the State Government contained the following incorrect and misleading information:-

(a) The note referred to in para 21.3 of this judgment was misleading in as much as the gist of recommendations of the Hon'ble Chief Justice in the letter dated 27.1.1998 did not refer to the anomaly issue though specifically referred to therein (pl.see para 7 of this judgment).

(At the hearing, this portion was relied

upon by the learned Government Pleader to contend that the Government having sanctioned under Government Resolution dated 27.2.1998 the pay-scales recommended by the Hon'ble Chief Justice through the above letter dated 27.1.1998, no grievance could be made by the petitioners regarding non-acceptance of the recommendations of the Hon'ble Chief Justice.)

(b) The last portion of the above note gave false figures of additional financial burden to the tune of Rs.2.63 crores for the last 20 years and recurring burden of Rs.14.61 lakhs per annum, as the additional burden which would be cast on the public exchequer upon acceptance of recommendations of the Hon'ble Chief Justice.

(c) Even the subsequent note signed by the Under Secretary, Finance Department (referred to in para 22 hereinabove) continued to give misleading information as discussed in paras 23 to 29 hereinabove.

It is most unfortunate that these notes were permitted to be submitted before this Court in the litigation under the charge of the Legal Department of the State Government.

60. The various acts of commission and omission

need to be seen in the context of the crucial role expected to be played by the Law Secretary as explained by the Apex Court in Gauhati High Court Vs. Kuladhar Phukan (2002) 4 SCC 524 (para 20).

> 'In almost all the States and Union Territories in the country serves of judicial officers are loaned by High Courts to the Governments for being utilized in litigation, judicial, law and legislative affairs departments of the Governments, by whatever name the departments may be called. The Secretary (Law) or a Legal Remembrancer serving under the Government though is a judicial officer whose services have been placed at the disposal of the Government by the High Court has a crucial role to play. He is a vital link of communication between the High Court and the Government and his relationship with the two wings strategically enables a healthy and appropriate relationship being maintained between the two.”
>
> [emphasis supplied]

The Law Secretary has sadly not come upto the above expectations. For the present, we do not make any further observations against the Law Secretary, a young judicial officer, who has spent the last about five years only doing administrative work (including last more than three and a half years in the State Government Secretariat).

61. Nevertheless, while disposing of the

appeals, we do not propose to close the chapter before getting a report from the learned Government Pleader submitting the following information:-

(1) Who prepared that portion of the note referred to in para 21.3 of this judgment containing gist of the Hon'ble Chief Justice's recommendations in the letter dated 27.1.1998, without referring to the anomaly issue (pl.see para 7 of this judgment).

(2) Who prepared that portion of the note referred to in para 21.3 of the judgment regarding the financial burden in view of the recommendations of the Hon'ble Chief Justice contained in the letters dated 29.6.1992 and 9.9.1998.

(3) Who instructed the learned Advocate General and the learned Government Pleader to submit the above note at the hearing of these appeals.

(4) Under whose instructions the Under Secretary, Finance Department prepared the note referred to in

para 22 of the judgment. The details of the service career of such officer who gave the said instructions as well as those of the said Under Secretary shall also be given.

Ordinarily it would have been sufficient for the learned Government Pleader to submit such report within two weeks. However, in view of the ensuing Diwali Vacation, we grant the learned Government Pleader time upto 30th November, 2006, to submit the report.

D I R E C T I O N S

62. In view of the above discussion, it is necessary to issue appropriate directions while dismissing the Letters Patent Appeals of the State Government, so that at the time of consideration afresh of the recommendations of the Hon'ble Chief Justice for approval under the proviso to Article 229(2) of the Constitution in light of the findings given and the observations made in this judgment, only the relevant facts and considerations are taken into account and no inroads are made into the powers of the Hon'ble Chief Justice in the matter of determination of conditions of service of the High Court staff including the Secretariat of the Hon'ble

Chief Justice. We accordingly issue the following directions :-

62.1 (a) The Registrar General, High Court of Gujarat, shall within one month from the date of receipt of this judgment, forward the proposal with the Draft Rules - “Gujarat Chief Justice's Secretariat Officers (Revision of Pay) Rules, 2006” (or by any other title) as per the recommendations already made by the Hon'ble Chief Justice of the High Court through the Registrar's letters dated 29.6.1992 and 9.9.1998 for the periods commencing from 13.11.1988 and 1.1.1996 respectively.

(b) The Registrar General shall also forward in writing acceptance by the Hon'ble the Chief Justice of the suggestion made in para (2) of the decision dated 26 April, 2004 of the State Government for the posts of Secretary, Additional Secretaries and Assistant Secretaries to the Hon'ble Chief Justice, read with the clarification in paras 55, 51.1 and 55.2 of this judgment.

(c) The Registrar General shall also forward a statement of calculations regarding the additional financial burden likely to be cast upon the State Exchequer upon acceptance of the aforesaid recommendations

dated 29.6.1992 and 9.9.1998 with reference to Basic Pay and Gross Pay of the Officers appointed to the Hon'ble Chief Justice's Secretariat before their appointment, and after their appointment in terms of the difference between the salaries and allowances payable in the pay scales as recommended by the Hon'ble Chief Justice on the one hand and the salaries and allowances payable in the one step higher pay scale as suggested by the State Government in their letter dated 13/14.10.2005 (referred to in para 26 of this judgment) on the other hand. While doing so, the Registrar General shall also take into account -

(i) that as per this judgment the refusal of the State Government to give retrospective effect to the removal of anomalies has been held to be unreasonable and arbitrary (Para 27).

(ii) the statement made on behalf of the petitioners that if their salaries are fixed by 31st March, 2007, in the scales recommended by the Hon'ble Chief Justice, they shall not claim any arrears of difference of salary/pension for the period prior to the date of the respective interim orders (para 30).

62.2 The State Government shall, within one month from the date of receipt of Draft Rules to be forwarded by the Registrar General as aforesaid, place before His Excellency the Governor of Gujarat for approval under the proviso to Article 229(2) of the Constitution, the Draft Rules for revision of pay scales of Secretary, Additional Secretaries and Assistant Secretaries to the Hon'ble Chief Justice alongwith the following documents/statements :-

(i) Chart I to this judgment indicating the anomalies and the recommendations of the Hon'ble Chief Justice,

(ii) copy of State Government decision taken on 26 April, 2004, (page 97 of the file) with clarification contained in paras 55, 51.1 and 55.2 of this judgment and also the acceptance by the Hon'ble Chief Justice of the suggestion made in para 2 of the said decision dated 26th April, 2004,

(iii) the factual position that the first incumbents of the posts of Secretary and Additional Secretary to the Hon'ble Chief Justice were already granted the pay scale of

Rs.4500-5700 in 1987/1988 till the death of the first incumbent in 1995/till the next revision to the other incumbent and the pay scale of Rs.14300-18300 to the other incumbent from 1.1.1996 till his death in 1998 and that these are the very pay-scales recommended by the Hon'ble Chief Justice through the Registrars' letters dated 29.6.1992 and 9.9.1998 for the subsequent appointees as well.

(iv) The fact that the original petitioners are already being paid salaries and allowances/pension on the basis of the pay fixed in the pay-scales recommended by the Hon'ble the Chief Justice for the posts of Secretary/Additional Secretary and for the post of Assistant Secretary since 1994/2001 pursuant to the interim orders of this Court (not disturbed by the Hon'ble Supreme Court) and that the petitioners have agreed not to claim any arrears of salary and allowances/pension (as the case may be) for the periods prior to the said interim orders, provided the State Government acquiesces in this

judgment and their pay/pension is regularly fixed by 31st March, 2007 in the pay-scales recommended by the Hon'ble the Chief Justice as far back as on 29.6.1992 and 9.9.1998.

(v) The fact that the State Government had even otherwise conveyed to the High Court on 13/14.10.2005 that the Stenographers appointed in the Chief Justices Secretariat could be given one step higher pay scale with prospective effect and that as per this judgment the refusal to give retrospective effect to removal of the anomalies has been held to be unreasonable and arbitrary.

(vi) The details of the additional financial burden likely to be cast on the State Exchequer upon acceptance of the Draft Rules for revision of pay-scales for the posts of Secretary, Additional Secretaries and Assistant Secretaries to the Hon'ble Chief Justice as indicated in direction (c) in para 62.1 hereinabove with specific reference to the fact that

the petitioners have given a concession not to claim the arrears of difference of salary for the period prior to the date of interim orders, if the State Government acquiesces in this judgment and their salary is fixed by 31st March 2007 in the scales as recommended by the Hon'ble the Chief Justice.

(vii) The manifold increase in the number of Courts, Judges and cases in the High Court and Subordinate Courts in the State under the Hon'ble the Chief Justice and Govt. Resolutions sanctioning creation of the posts. (paras 31 to 32.3)

(vii) A copy of this judgment shall also be placed before His Excellency the Governor of Gujarat.

62.3 The Registrar General shall, within one month from the date of receipt of this judgment, forward to the State Government a proposal with the Draft Rules “The Gujarat Chief Justice Secretariat Officers (Revision of Pay) (First Amendment) Rules 2006/2007 (or with any other title) for revision of pay-scale for the post of Additional Registrar-cum-Principal Private Secretary to Hon'ble the Chief Justice with effect from 1.11.2004, also with a clarificatory letter that the incumbent of the post will be paid salary in the said scale so long as the

incumbent continues to hold the post and also along with a statement of calculations about additional financial burden likely to be cast upon the State Exchequer, on the lines indicated in direction (c) in para 62.1 hereinabove.

62.4 The State Government shall, within one month from receipt of the proposal forwarded by Registrar General under the preceding direction, place the same before His Excellency the Governor for approval under the proviso to 229(2) of the Constitution alongwith Chart-I to this judgment and also a copy of this judgment.

62.5 Since the question of anomalies in the pay-scales of Secretary, Additional Secretaries and Assistant Secretaries to the Hon'ble Chief Justice arose in July/November 1991 and is pending consideration since June 1992, and the petitions were also filed in 1994/2001, any correspondence, discussion or consultation regarding revision of pay-scale for the post of Additional Registrar-cum-Principal Private Secretary to the Hon'ble Chief Justice created with effect from 1.11.2004 shall not be allowed to cause delay in approval of pay-scales recommended by the Hon'ble Chief Justice as far back as on 29.6.1992 and 9.9.1998, and to be contained in the Draft Rules to be forwarded by the Registrar General under direction (a) in para 62.1 hereinabove.

62.6 The interim orders passed during pendency of

the petitions shall continue till the recommendations of the Hon'ble Chief Justice are considered by His Excellency the Governor afresh in light of this judgment. The interim orders dated 01.05.2001 as modified by orders dated 17.08.2001 in Letter Patent Appeal No.768 of 2001 shall also apply to the officers presently working in the Chief Justice's Secretariat.

63. It is hoped and expected that the matter of granting approval under the proviso to Article 229(2) of the Constitution to the proposals to be forwarded as per directions contained hereinabove will be concluded as expeditiously as possible and preferably by 28th February, 2007.

64. We clarify that the directions given in this judgment are rendered in the peculiar facts and circumstances of the case already highlighted in the judgment including paras 53 to 53.4 hereinabove.

65. In view of the directions contained in para 62 hereinabove, it is obvious that the order dated 2.8.2006 of the learned Single Judge does not survive and the proceedings in Misc. Civil Application No. 66 of 2004 will also not survive as the matter will be considered afresh as per the new time schedule given in this judgment.

66. Subject to the directions contained in para 62 and the clarification given hereinabove, we

dismiss the Letters Patent Appeals of the State Government.

67. We further direct that the learned Government Pleader shall, by 30th November 2006, submit the report furnishing the information as required in para 61 of this judgment.

68. We place on record our appreciation of the valuable assistance rendered by learned Advocate General Mr Kamal B Trivedi, learned Government Pleader Mr Sunit S Shah with learned AGP Ms Sangeeta Vishen, Mr JB Pardiwala, learned standing counsel for the High Court and also Mr PM Thakkar, learned Senior Counsel and Mr GM Joshi, learned counsel with Mr AL Sharma for the original petitioners.

For consideration of the report of the learned Government Pleader, S.O. to 7th December, 2006.

[M.S. SHAH, J.]

[K.M. MEHTA, J.]

sundar/-